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F I L E D
Clerk of the Superior Court

SEP 28 2011

By: C. BANKS, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

**STEVE POIZNER, INSURANCE
COMMISSIONER OF THE STATE OF
CALIFORNIA, in his capacity as
Liquidator of Frontier Pacific Insurance
Company,,**

Plaintiff,

v.

**NATIONAL INDEMNITY COMPANY, a
Nebraska corporation; and DOES 1 through
10,,**

Defendants.

Case No. 08 CV 772-MMA(POR)

**EIGHTEENTH STATUS CONFERENCE
REPORT**

Date: October 7, 2011
Time: 1:00 p.m.
Dept: 71
Judge: Hon. Ronald S. Prager
Trial Date: None Set
Action Filed: September 7, 2001

INTRODUCTION

Frontier Pacific Insurance Company ("FPIC"), a California domiciled property and casualty company, was conserved by the Insurance Commissioner ("Commissioner") on September 7, 2001, based on a finding that further transaction of its business would be hazardous to policyholders and creditors pursuant to Insurance Code section 1011. Subsequently, the

1 Commissioner determined that FPIC's financial condition was such that rehabilitation would be
2 futile and the Commissioner's Application for Order Appointing Commissioner as Liquidator
3 ("Liquidator") and Restraining Orders was granted on November 30, 2001 (the "Liquidation
4 Order"). Prior to the Commissioner's actions, in August 2001, its parent company, Frontier
5 Insurance Company ("FIC") of New York voluntarily entered rehabilitation under the control of
6 the New York Superintendent of Insurance, acting through the New York Liquidation Bureau (the
7 "NYLB"). As a result of FIC's rehabilitation, certain reinsurance recoverables due to FPIC from
8 FIC were not received and could therefore no longer be carried as assets on the books of FPIC.
9 An examination by the California Department of Insurance's Financial Analysis Division found
10 that based on the disallowance of the FIC reinsurance credit in the amount of \$12,842,609,
11 FPIC's surplus as regards policyholders was a negative \$5,289,995.

12 At the time of the initial case management conference in this matter on March 15, 2002, the
13 Court announced its intention to hold semi-annual status conferences in this matter so that the
14 Court could periodically be informed regarding the status of the liquidation of FPIC. For the
15 convenience of the Court, the Liquidator presented the first status report on September 13, 2002,
16 the second on March 24, 2003, the third on February 24, 2004, the fourth on September 30, 2004,
17 the fifth on April 29, 2005, the sixth on January 13, 2006, the seventh on June 9, 2006, the eighth
18 report on January 5, 2006, the ninth report on October 5, 2007, the tenth report on April 16, 2008,
19 the eleventh report on October 17, 2008, the twelfth report on April 17, 2009, the thirteenth report
20 on November 6, 2009, the fourteenth report on March 12, 2010, the fifteenth report on July 16,
21 2010, the sixteenth report on April 15, 2011, and the seventeenth report on July 8, 2011. The
22 seventeenth status report is hereby incorporated herein by reference.

23 **STATUS OF THE NICO LITIGATION/ARBITRATION**

24 The only significant change of which the undersigned is aware to report to this Court since
25 the last status conference concerns the dispute involving the reinsurance obligations of National
26 Indemnity Company (NICO). As previously noted, the Liquidator instituted an action for
27 declaratory relief against National Indemnity Insurance Company entitled *Steve Poizner,*
28 *Insurance Commissioner for the State of California in his capacity as Liquidator of Frontier*

1 *Pacific Insurance Company vs. National Indemnity Company*, San Diego Superior Court, Case
2 No. 37-2008-00080104-CU-MC-CTL. NICO removed the case to the United States District
3 Court for the Southern District of California, where it was assigned Case No. 08 CV 772 L. Upon
4 NICO's application, the court granted its request to stay the proceeding pending completion of
5 arbitration. The next Federal Status Conference will be held on November 16, 2001 at which
6 time we will request that matter be dismissed on the grounds of mootness.

7 As noted in the Reinsurance portion of prior Statements, the Liquidator commenced
8 arbitration with NICO seeking recovery of all amounts due from NICO. The arbitration was
9 completed March 25, 2011, and was taken under submission by the arbitration panel. On August
10 12, 2011, the arbitration panel awarded FPIC \$13,039,326.28 and interest at the rate of 6% simple
11 interest to paid within 30 days. Attached hereto as Exhibit A and incorporated herein is a copy of
12 the August 12, 2011, arbitration award. On August 27, 2011, the arbitration panel awarded
13 interest of \$4,700,000.00 payable no later than September 11, 2011. Attached hereto as Exhibit B
14 and incorporated herein by reference is copy of the August 27, 2011, interest award. Pursuant to
15 the terms of the awards, NICO has paid FPIC \$17,739,326.28

16 The award excluded FPIC's pre-liquidated Unallocated Loss Adjustment Expenses (ULAE)
17 claims against NICO that are in excess of \$3,000,000 without interest. These claims will be the
18 subject of negotiation or a subsequent arbitration proceeding. Plaintiff will be seeking a subpoena

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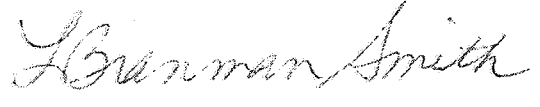
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from this Court for FPIC records currently held in New York related to the ULAE issue as well as any other documentation that the Liquidator seeks on behalf of FPIC.

Plaintiff requests the next status report be held no earlier than February 2012.

Dated: September 27, 2011

Respectfully Submitted,
KAMALA D. HARRIS
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FELIX E. LEATHERWOOD
Supervising Deputy Attorney General
TIM NADER
Deputy Attorney General



LESLIE BRANMAN SMITH
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Conservation & Liquidation*

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EXHIBIT A

ARBITRATION BETWEEN

**FRONTIER PACIFIC INSURANCE
COMPANY, ("FPIC")**

Petitioner,

Robert M. Mangino, Umpire

Robert M. Hall, Arbitrator

And

Donald T. DeCarlo, Arbitrator

NATIONAL INDEMNITY COMPANY, ("NICO")

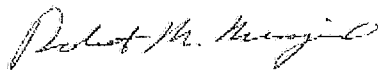
Respondent.

FINAL AWARD

The Panel reviewed Reports dated July 20, 2011 submitted by the parties pursuant to paragraph 3 of the Third Interim Final Award on the exhaustion of the Funds Withheld Account established under the 95 Treaty and other questions related to this matter. After due deliberation the Panel rules, with Mr. DeCarlo dissenting regarding paragraph 3, as follows:

1. The Panel adopts for purposes of this Award the amount of the Funds Withheld Account as of December 31, 2003 as \$ 1,128,535.17 and of September 30, 2010 as \$1,614,590.75.
2. Thus, the amount due FPIC as of 30 days from the date of this Award, not including interest, is \$ 13,039,326.28. The components of this Award are stated in Exhibit M attached to the Report filed by NICO on July 20, 2011 (FPIC Claims Against NICO Cover as of 3Q10).
3. Interest on the amount due FPIC, as stated in paragraph 2, above, shall be calculated at the rate of 6% simple interest beginning at the end of the quarter following the quarter in which each claim was approved in the FPIC liquidation proceeding. Any amounts due FPIC under paragraphs 2 and 3 of this Award and not paid within 30 days following the date of this Award will accrue interest thereafter until paid at the annual rate of 9 %. The Panel shall retain jurisdiction of interest factors under this paragraph for 30 days or until balances and interest have been paid, whichever occurs sooner.
4. Any request by the parties and not covered herein is denied.

On behalf of the Panel,



Robert M. Mangino, Umpire
August 12, 2011

EXHIBIT B

ARBITRATION BETWEEN

**FRONTIER PACIFIC INSURANCE
COMPANY, ("FPIC")**

Petitioner,

Robert M. Mangino, Umpire

Robert M. Hall, Arbitrator

And

Donald T. DeCarlo, Arbitrator

NATIONAL INDEMNITY COMPANY, ("NICO")

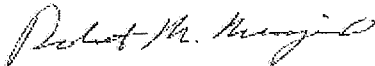
Respondent.

INTEREST AWARD

The Panel reviewed recent reports submitted by the parties pursuant to paragraph 3 of the Panel's Final Award dated August 12, 2011 and covering the issue of the appropriate interest to be paid by NICO to FPIC on claims submitted by FPIC under the NICO cover. After due deliberation the Panel, by majority vote, rules as follows:

1. NICO will submit to FPIC interest payments on claims incurred in this arbitration, including ULAE or ALAE, in the total amount of \$4,700,000, payable in full on or before September 11, 2011.
2. Mr. DeCarlo dissents on the following decisions,
 - a. the payment of any interest,
 - b. the scope and method used to determine the interest,
 - c. applying interest to claims before they were reported, and
 - d. the payment of interest on ULAE.

On behalf of the Panel,



Robert M. Mangino, Umpire
August 27, 2011

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **POIZNER v. NATIONAL INDEMNITY COMPANY**

F I L E D
Clerk of the Superior Court

No.: **GIC 774028**

SEP 28 2011

I declare:

By: C. BANKS, Deputy

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 28, 2011, I served the attached **EIGHTEENTH STATUS CONFERENCE REPORT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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